

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:04CR315
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
ROBERT PAYNE ANDERSON, III,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR") and the Defendant's Statement (Filing No. 44). The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) requires a specific sentence of 84 months imprisonment. The PSR places the Defendant in a sentencing guideline range of 100-120 months, based on a total offense level of 24 and placement in criminal history category VI, although a downward departure may be warranted for over representation of criminal history. The Court's tentative findings are that, absent unusual circumstances, the Rule 11(c)(1)(C) plea agreement should be upheld.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects, but that I am likely to uphold the Rule 11(c)(1)(C) plea agreement;
2. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel

and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 13th day of May, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge